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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1193

ST. FRANCIS HOSPITAL,

Petitioner,

vs.

**GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUP-
PORT THEREOF.**

SAMUEL GEORGE WAGNER,

EDWARD J. I. GANNON,

Counsel for Petitioner.



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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1941

No. 1193

ST. FRANCIS HOSPITAL,

Petitioner,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE.

**PETITION FOR REVIEW ON CERTIORARI OF THE
DECISION OF THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA.**

*To the Honorable, The Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The petitioner, St. Francis Hospital, a Pennsylvania corporation not for profit, of the City of Pittsburgh, Allegheny County, Pennsylvania, prays that a writ of certiorari may be issued to the United States Court of Appeals for the District of Columbia to review a decree of said court made and entered February 2, 1942, and respectfully submits the following:

Proceedings.

(a) Board of Tax Appeals.

In this case the Commissioner of Internal Revenue on February 20, 1939 determined that St. Francis Hospital

was subject to tax for the years 1930, 1931, 1932 and 1933 and made an assessment against said hospital which with penalty amounted to \$3761.24. An appeal was taken to the United States Board of Tax Appeals May 17, 1939, and said Board entered judgment for the Commissioner October 25, 1940 (42 B. T. A. 1004).

(b) *Court of Appeals.*

January 2, 1941 a petition for review of said decision was filed in the United States Court of Appeals for the District of Columbia, as no returns had been filed by said St. Francis Hospital, and on February 2, 1942, the said Court of Appeals affirmed the order of the Board (125 F. 2d, 553).

Summary Statement of the Matter Involved.

The facts are set forth in a stipulation (R. 19-22), and are as follows:

St. Francis Hospital of Pittsburgh is a non profit Pennsylvania corporation engaged in charitable work of maintaining a hospital in the City of Pittsburgh. Its hospital buildings are encumbered by a mortgage to the Union Trust Company of Pittsburgh, a domestic corporation, in the sum of \$1,100,000 accompanied by a single bond to said Trust Company, executed July 21, 1930, which mortgage includes the usual provision for the payment of interest without deduction of Federal income tax up to 2%.

Subsequent to the delivery of the mortgage about August 21, 1930, the Union Trust Company, without any notice to or knowledge on the part of St. Francis Hospital, executed and retained in its records a "Declaration" that the said mortgage and bond were "held in trust for the several estates interested therein to the extent of the contribution of each of said trust estates toward the principal thereof

as shown by the books" of the company (R. 23); without specifying any particular estates and without any record of said "Declaration" in the Recorder's Office of the proper county.

Each semi-annual installment of interest in accordance with the provisions of the mortgage and bond was paid by the hospital in a single check to the Union Trust Company. The Union Trust Company allocated on its books to the various estates such portions of the interest payments as were applicable to such estates; and thereafter sent to the hospital Treasury Form No. 1000, known as "Ownership Certificate" for each estate, showing the amount of such interest.

Jurisdiction.

Petitioner prays the Supreme Court to exercise its jurisdiction under Section 240 (a) of the Judicial Code (28 U. S. C. A. 347; 43 Stat. 938).

The Question Involved.

Is the petitioner liable as "withholding agent" for income tax upon the payment of interest on a single bond and mortgage to a domestic corporation under the Revenue Act requiring withholding where the interest is "*payable to* an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein", because the mortgagee, as corporate fiduciary, without notice to or consent of the mortgagor, allocated merely by notation on its books portions of the said mortgage and bond to various estates, the interest being paid to the mortgagee in accordance with the mortgage and bond without any recognition by the mortgagor of such allocation?

The Reasons for Allowance of the Writ.

Your petitioner avers that the United States Court of Appeals for the District of Columbia in this case has decided erroneously a question of general importance to the persons and corporations who have executed mortgages with bonds accompanying the same; and that it involves a question of substance relating to the construction of the statute of the United States covering the withholding of tax, which has not been, but should be, settled by this Court.

It is conceded by the Commissioner and by the Court below that, under the bond and mortgage as executed, petitioner would not have been required to pay any tax. Because the Trust Company subsequently allocated portions of the mortgage on its books to various estates, the funds of which were from time to time invested therein, the Court of Appeals nevertheless held that petitioner became liable for the payment of such tax, notwithstanding the fact that the interest was still "payable to" the fiduciary, Union Trust Company, a domestic corporation; that the mortgagee, even if it were not a fiduciary, had no right to divide this obligation into numerous parts; and that your petitioner was not bound by any partial assignments thereof, but only in the case of a single assignment of the whole obligation as set forth in the rulings quoted in the supporting brief, filed herewith.

The decision of the Court of Appeals also disregarded the statute of Pennsylvania, the only authorization for holding of a mortgage by a fiduciary, such as the Union Trust Company, and the allocation of participations therein among trust estates. This statute, which is quoted in the supporting brief, specifically provides that no estate "participating shall be deemed to have individual ownership in any bond and mortgage", and that the fiduciary shall

have the right at any time to take back "any such bonds and mortgages from such fund, with the right to substitute therefor other bonds and mortgages." Under this statute the interest on such "pool" mortgage "is payable" only to the fiduciary, and the participating estates have no "ownership" therein or right to collect the same.

It is petitioner's position that under the bond and mortgage as originally prepared, there was no obligation on it under the income tax provisions as withholding agent and no such payment was contemplated by the parties; and there could be no liability except in the remote contingency of an assignment of the entire mortgage of \$1,100,000 to an individual, a partnership or a foreign corporation. This is not a case of a severable bond issue, or a mortgage or deed of trust to secure an issue of numerous bonds, but of a single bond accompanying a single mortgage.

The question presented here is vital to the continued operation of this charitable institution; and the proper construction of this statute is of such general interest and substantial importance that it should be settled by your Honorable Court.

Your petitioner makes a part of this petition the record in the Court of Appeals for the District of Columbia and the brief in support of this petition.

WHEREFORE, your petitioner respectfully prays that the court will grant a writ of certiorari directed to the Court of Appeals for the District of Columbia to the end that this case may be reviewed and determined by this Court; and that petitioner may have such other and further relief as to the Court may seem proper.

SAMUEL GEORGE WAGNER,
EDW. J. I. GANNON,
Attorneys for St. Francis Hospital.